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AMENDED IN SENATE AUGUST 24, 2011
AMENDED IN SENATE AUGUST 22, 2011
AMENDED IN SENATE JULY 11, 2011
AMENDED IN SENATE JUNE 22, 2011
AMENDED IN ASSEMBLY MAY 31, 2011
AMENDED IN ASSEMBLY MAY 19, 2011
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AMENDED IN ASSEMBLY APRIL 4, 2011
AMENDED IN ASSEMBLY MARCH 29, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 54

Introduced by Assembly Member Solorio

December 6, 2010

An act to amend Section 14300 of, and to add Sections 14300.5, 14301.1, 14301.2, and 14301.3 to, the Corporations Code, to amend Sections 56375 and 56430 of the Government Code, and to add Section 116760.65 to, and to add Article 12 (commencing with Section 116755) to Chapter 4 of Part 12 of Division 104 of, the Health and Safety Code, relating to drinking water.

LEGISLATIVE COUNSEL'S DIGEST

AB 54, as amended, Solorio. Drinking water.

(1) Existing law authorizes any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes, and requires any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for domestic use, to provide in its articles or bylaws that water shall be sold, distributed, supplied, or delivered only to owners of its shares and that those shares are appurtenant to certain lands, as specified.

This bill would specify that any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes, and any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for domestic use that provides in its articles or bylaws that the water shall be sold, distributed, supplied, or delivered only to owners of its shares and that those shares are appurtenant to certain lands shall be known as a mutual water company.

The bill would also require each mutual water company that operates a public water system to, by December 31, 2012, submit a map depicting the approximate boundaries of the property that the municipal water company serves to the local agency commission within the county in which the mutual water company operates. The bill would prohibit a mutual water company from expanding its boundaries without approval from the appropriate local agency formation commission. The bill would require a mutual water company that operates a public water system to supply certain information to a local agency formation commission upon request, as specified. This bill would require a mutual water company that operates a public water system to maintain a financial reserve fund to be used for certain types of activities.

The bill would also require each board member of a mutual water company that operates a public water system to, within 6 months of taking office, complete a 2-hour course offered by a qualified trainer, as specified.

(2) Existing law, the California Safe Drinking Water Act, requires the State Department of Public Health to administer provisions relating to the regulation of drinking water to protect public health, including, but not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, adopting enforcement regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies.

Existing law establishes the Safe Drinking Water State Revolving Fund, continuously appropriated to the department for the provision of grants and revolving fund loans to provide for the design and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards. Existing law requires the department to establish criteria to be met for projects to be eligible for consideration for this funding.

This bill would provide that in considering an application for funding a project, the department shall not be prejudiced by the applicant initiating the project prior to the department approving the application for funding. This bill would also provide that *preliminary* project costs or construction costs that are otherwise eligible for funding shall not be ineligible because the costs were incurred by the applicant during certain time periods.

(3) Existing law, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, sets forth the powers and duties of a local agency formation commission, including, among others, the powers to review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission.

This bill would additionally authorize the commission to approve, with or without amendment, wholly, partially, or conditionally, or disapprove the annexation of territory served by a mutual water company that operates a public water system into the jurisdiction of a city, a public utility, or a special district, with the consent of the respective public agency or public utility and mutual water company.

(4) Under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, each local agency formation commission is required to develop and determine the sphere of influence of each local governmental agency within the county and enact policies designed to promote the logical and orderly development of areas within the sphere of influence. In order to prepare and update spheres of influence, the commission is required to conduct a service review, including the review of growth and population projections for the affected area, present and planned capacity of public facilities and adequacy of public services, financial ability of agencies to provide services, the status of, and opportunities for, shared facilities, accountability for community service needs, and any other matter related to effective or efficient service delivery, as required by commission policy.

This bill would authorize the commission to include in the service review, a review of whether the agencies under review comply with safe drinking water standards. This bill would provide that a public water system may comply with that review by submitting certain documents.

(5) Existing law provides for the imposition of civil fines in amounts up to \$5,000 or \$25,000 for specified violations of the California Safe Drinking Water Act.

This bill would provide that a mutual water company is liable for any fines, penalties, costs, expenses, or other amounts that may be imposed upon the mutual water company under the California Safe Drinking Water Act. This bill would authorize a mutual water company to levy an assessment to pay those fines. This bill would provide that if the amount of those fines exceeds 5% of the annual budget of a mutual water company, then the mutual water company would be required to levy an assessment to pay those fines.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) Californians rely on a broad diversity of public and private
4 organizations to deliver clean and safe drinking water to their home
5 water taps. Regardless of the form of the organization that operates
6 a public water system, these organizations provide a public service
7 that remains one of the core duties of the people's government.
8 (b) While the state's goal is to ensure clean and safe drinking
9 water, California's drinking water quality has deteriorated and
10 some public water systems continue to suffer poor water quality
11 that are inconsistent with safe drinking water standards.
12 (c) The state provides funding to public water systems to
13 improve drinking water quality through the Safe Drinking Water
14 Revolving Fund, but demand far exceeds the available funding.
15 Based on the United States Environmental Protection Agency's
16 Drinking Water Infrastructure Needs Survey and Assessment,
17 which was performed in 2007, the State Department of Public
18 Health estimates that the 20-year drinking water infrastructure

1 need for California is \$39 billion. Funding for such projects,
2 however, for 1997–2008 totaled only \$1.2 billion.

3 SEC. 2. Section 14300 of the Corporations Code is amended
4 to read:

5 14300. (a) Any corporation organized for or engaged in the
6 business of selling, distributing, supplying, or delivering water for
7 irrigation purposes may provide, and any corporation organized
8 for or engaged in the business of selling, distributing, supplying,
9 or delivering water for domestic use shall provide, in its articles
10 or bylaws that water shall be sold, distributed, supplied, or
11 delivered only to owners of its shares and that the shares shall be
12 appurtenant to certain lands when the same are described in the
13 certificate issued therefor; and when the certificate is so issued
14 and a certified copy of the articles or bylaws recorded in the office
15 of the county recorder in the county where the lands are situated
16 the shares of stock shall become appurtenant to the lands and shall
17 only be transferred therewith, except after sale or forfeiture for
18 delinquent assessments thereon as provided in Section 14303.
19 Notwithstanding this provision in its articles or bylaws, any such
20 corporation may sell water to the state, or any department or agency
21 thereof, or to any school district, or to any public agency, or, to
22 any other mutual water company or, during any emergency
23 resulting from fire or other disaster involving danger to public
24 health or safety, to any person at the same rates as to holders of
25 shares of the corporations; and provided further, that any
26 corporation may enter into a contract with a county fire protection
27 district to furnish water to fire hydrants and for fire suppression
28 or fire prevention purposes at a flat rate per hydrant or other
29 connection. In the event lands to which any stock is appurtenant
30 are owned or purchased by the state, or any department or agency
31 thereof, or any school district, or public agency, the stock shall be
32 canceled by the secretary, but shall be reissued to any person later
33 acquiring title to the land from the state department, agency, or
34 school district, or public agency.

35 (b) A corporation described in subdivision (a) shall be known
36 as a mutual water company.

37 SEC. 3. Section 14300.5 is added to the Corporations Code,
38 to read:

1 14300.5. For purposes of this chapter, “public water system”
2 shall have the same meaning as provided in Section 116275 of the
3 Health and Safety Code.

4 SEC. 4. Section 14301.1 is added to the Corporations Code,
5 to read:

6 14301.1. (a) No later than December 31, 2012, each mutual
7 water company that operates a public water system shall submit
8 to the local agency formation commission for its county a map
9 depicting the approximate boundaries of the property that the
10 mutual water company serves.

11 (b) A mutual water company that operates a public water system
12 shall respond to a request from a local agency formation
13 commission, located within a county that the mutual water
14 company operates in, for information in connection with the
15 preparation of municipal service reviews or spheres of influence
16 pursuant to Chapter 4 (commencing with Section 56425) of Part
17 2 of Division 3 of Title 5 of the Government Code within 45 days
18 of the request. The mutual water company shall provide all
19 reasonably available nonconfidential information relating to the
20 operation of the public water system. The mutual water company
21 shall explain, in writing, why any requested information is not
22 reasonably available. The mutual water company shall not be
23 required to disclose any information pertaining to the names,
24 addresses, or water usage of any specific shareholder. This
25 subdivision shall not be interpreted to require a mutual water
26 company to undertake any study or investigation. A mutual water
27 company may comply with this section by submitting to the local
28 agency formation commission the same information that the mutual
29 water company submitted to the State Department of Public Health.

30 (c) A mutual water company that operates a public water system
31 shall be subject to the requirements of, and has the powers granted
32 by, subdivision (b) of Section 116755 of the Health and Safety
33 Code.

34 SEC. 5. Section 14301.2 is added to the Corporations Code,
35 to read:

36 14301.2. Each board member of a mutual water company that
37 operates a public water system shall comply with the training
38 requirements set out in subdivision (a) of Section 116755 of the
39 Health and Safety Code.

1 SEC. 6. Section 14301.3 is added to the Corporations Code,
2 to read:

3 14301.3. (a) All construction on public water systems operated
4 by a mutual water company shall be designed and constructed to
5 comply with the applicable California Waterworks standards, as
6 provided in Chapter 16 of Title 22 of the California Code of
7 Regulations.

8 (b) A mutual water company that operates a public water system
9 shall maintain a financial reserve fund for repairs and replacements
10 to its water production, transmission, and distribution facilities at
11 a level sufficient for continuous operation of facilities in
12 compliance with the federal Safe Drinking Water Act (42 U.S.C.
13 Sec. 300f et seq.) and the California Safe Drinking Water Act
14 (Chapter 4 (commencing with 116270) of Part 12 of Division 104
15 of the Health and Safety Code).

16 SEC. 7. Section 56375 of the Government Code is amended
17 to read:

18 56375. The commission shall have all of the following powers
19 and duties subject to any limitations upon its jurisdiction set forth
20 in this part:

21 (a) (1) To review and approve with or without amendment,
22 wholly, partially, or conditionally, or disapprove proposals for
23 changes of organization or reorganization, consistent with written
24 policies, procedures, and guidelines adopted by the commission.

25 (2) The commission may initiate proposals by resolution of
26 application for any of the following:

27 (A) The consolidation of a district, as defined in Section 56036.

28 (B) The dissolution of a district.

29 (C) A merger.

30 (D) The establishment of a subsidiary district.

31 (E) The formation of a new district or districts.

32 (F) A reorganization that includes any of the changes specified
33 in subparagraph (A), (B), (C), (D), or (E).

34 (3) A commission may initiate a proposal described in paragraph
35 (2) only if that change of organization or reorganization is
36 consistent with a recommendation or conclusion of a study
37 prepared pursuant to Section 56378, 56425, or 56430, and the
38 commission makes the determinations specified in subdivision (b)
39 of Section 56881.

1 (4) A commission shall not disapprove an annexation to a city,
2 initiated by resolution, of contiguous territory that the commission
3 finds is any of the following:

4 (A) Surrounded or substantially surrounded by the city to which
5 the annexation is proposed or by that city and a county boundary
6 or the Pacific Ocean if the territory to be annexed is substantially
7 developed or developing, is not prime agricultural land as defined
8 in Section 56064, is designated for urban growth by the general
9 plan of the annexing city, and is not within the sphere of influence
10 of another city.

11 (B) Located within an urban service area that has been delineated
12 and adopted by a commission, which is not prime agricultural land,
13 as defined by Section 56064, and is designated for urban growth
14 by the general plan of the annexing city.

15 (C) An annexation or reorganization of unincorporated islands
16 meeting the requirements of Section 56375.3.

17 (5) As a condition to the annexation of an area that is
18 surrounded, or substantially surrounded, by the city to which the
19 annexation is proposed, the commission may require, where
20 consistent with the purposes of this division, that the annexation
21 include the entire island of surrounded, or substantially surrounded,
22 territory.

23 (6) A commission shall not impose any conditions that would
24 directly regulate land use density or intensity, property
25 development, or subdivision requirements.

26 (7) The decision of the commission with regard to a proposal
27 to annex territory to a city shall be based upon the general plan
28 and rezoning of the city. When the development purposes are not
29 made known to the annexing city, the annexation shall be reviewed
30 on the basis of the adopted plans and policies of the annexing city
31 or county. A commission shall require, as a condition to
32 annexation, that a city prezone the territory to be annexed or present
33 evidence satisfactory to the commission that the existing
34 development entitlements on the territory are vested or are already
35 at build-out, and are consistent with the city's general plan.
36 However, the commission shall not specify how, or in what
37 manner, the territory shall be rezoned.

38 (b) With regard to a proposal for annexation or detachment of
39 territory to, or from, a city or district or with regard to a proposal
40 for reorganization that includes annexation or detachment, to

1 determine whether territory proposed for annexation or detachment,
2 as described in its resolution approving the annexation, detachment,
3 or reorganization, is inhabited or uninhabited.

4 (c) With regard to a proposal for consolidation of two or more
5 cities or districts, to determine which city or district shall be the
6 consolidated successor city or district.

7 (d) To approve the annexation of unincorporated, noncontiguous
8 territory, subject to the limitations of Section 56742, located in the
9 same county as that in which the city is located, and that is owned
10 by a city and used for municipal purposes and to authorize the
11 annexation of the territory without notice and hearing.

12 (e) To approve the annexation of unincorporated territory
13 consistent with the planned and probable use of the property based
14 upon the review of general plan and rezoning designations. No
15 subsequent change may be made to the general plan for the annexed
16 territory or zoning that is not in conformance to the rezoning
17 designations for a period of two years after the completion of the
18 annexation, unless the legislative body for the city makes a finding
19 at a public hearing that a substantial change has occurred in
20 circumstances that necessitate a departure from the rezoning in
21 the application to the commission.

22 (f) With respect to the incorporation of a new city or the
23 formation of a new special district, to determine the number of
24 registered voters residing within the proposed city or special district
25 or, for a landowner-voter special district, the number of owners
26 of land and the assessed value of their land within the territory
27 proposed to be included in the new special district. The number
28 of registered voters shall be calculated as of the time of the last
29 report of voter registration by the county elections official to the
30 Secretary of State prior to the date the first signature was affixed
31 to the petition. The executive officer shall notify the petitioners of
32 the number of registered voters resulting from this calculation.
33 The assessed value of the land within the territory proposed to be
34 included in a new landowner-voter special district shall be
35 calculated as shown on the last equalized assessment roll.

36 (g) To adopt written procedures for the evaluation of proposals,
37 including written definitions consistent with existing state law.
38 The commission may adopt standards for any of the factors
39 enumerated in Section 56668. Any standards adopted by the
40 commission shall be written.

1 (h) To adopt standards and procedures for the evaluation of
2 service plans submitted pursuant to Section 56653 and the initiation
3 of a change of organization or reorganization pursuant to
4 subdivision (a).

5 (i) To make and enforce regulations for the orderly and fair
6 conduct of hearings by the commission.

7 (j) To incur usual and necessary expenses for the
8 accomplishment of its functions.

9 (k) To appoint and assign staff personnel and to employ or
10 contract for professional or consulting services to carry out and
11 effect the functions of the commission.

12 (l) To review the boundaries of the territory involved in any
13 proposal with respect to the definiteness and certainty of those
14 boundaries, the nonconformance of proposed boundaries with lines
15 of assessment or ownership, and other similar matters affecting
16 the proposed boundaries.

17 (m) To waive the restrictions of Section 56744 if it finds that
18 the application of the restrictions would be detrimental to the
19 orderly development of the community and that the area that would
20 be enclosed by the annexation or incorporation is so located that
21 it cannot reasonably be annexed to another city or incorporated as
22 a new city.

23 (n) To waive the application of Section 22613 of the Streets and
24 Highways Code if it finds the application would deprive an area
25 of a service needed to ensure the health, safety, or welfare of the
26 residents of the area and if it finds that the waiver would not affect
27 the ability of a city to provide any service. However, within 60
28 days of the inclusion of the territory within the city, the legislative
29 body may adopt a resolution nullifying the waiver.

30 (o) If the proposal includes the incorporation of a city, as defined
31 in Section 56043, or the formation of a district, as defined in
32 Section 2215 of the Revenue and Taxation Code, the commission
33 shall determine the property tax revenue to be exchanged by the
34 affected local agencies pursuant to Section 56810.

35 (p) To authorize a city or district to provide new or extended
36 services outside its jurisdictional boundaries pursuant to Section
37 56133.

38 (q) To enter into an agreement with the commission for an
39 adjoining county for the purpose of determining procedures for
40 the consideration of proposals that may affect the adjoining county

1 or where the jurisdiction of an affected agency crosses the boundary
2 of the adjoining county.

3 (r) To approve with or without amendment, wholly, partially,
4 or conditionally, or disapprove pursuant to this section the
5 annexation of territory served by a mutual water company formed
6 pursuant to Part 7 (commencing with Section 14300) of Division
7 3 of Title 1 of the Corporations Code that operates a public water
8 system to a city or special district. Any annexation approved in
9 accordance with this subdivision shall be subject to the state and
10 federal constitutional prohibitions against the taking of private
11 property without the payment of just compensation. This
12 subdivision shall not impair the authority of a public agency or
13 public utility to exercise eminent domain authority.

14 SEC. 8. Section 56430 of the Government Code is amended
15 to read:

16 56430. (a) In order to prepare and to update spheres of
17 influence in accordance with Section 56425, the commission shall
18 conduct a service review of the municipal services provided in the
19 county or other appropriate area designated by the commission.
20 The commission shall include in the area designated for service
21 review the county, the region, the subregion, or any other
22 geographic area as is appropriate for an analysis of the service or
23 services to be reviewed, and shall prepare a written statement of
24 its determinations with respect to each of the following:

25 (1) Growth and population projections for the affected area.

26 (2) Present and planned capacity of public facilities and
27 adequacy of public services, including infrastructure needs or
28 deficiencies.

29 (3) Financial ability of agencies to provide services.

30 (4) Status of, and opportunities for, shared facilities.

31 (5) Accountability for community service needs, including
32 governmental structure and operational efficiencies.

33 (6) Any other matter related to effective or efficient service
34 delivery, as required by commission policy.

35 (b) In conducting a service review, the commission shall
36 comprehensively review all of the agencies that provide the
37 identified service or services within the designated geographic
38 area.

39 (c) In conducting a service review, the commission may include
40 a review of whether the agencies under review, including any

1 public water system as defined in Section 116275, are in
2 compliance with the Safe Drinking Water Act. A public water
3 system may satisfy any request for information as to compliance
4 with the Safe Drinking Water Act by submission of the consumer
5 confidence or water quality report prepared by the public water
6 system as provided by Section 116470 of the Health and Safety
7 Code.

8 (d) The commission may request information, as part of a service
9 review under this section, from identified public or private entities
10 that provide wholesale or retail supply of drinking water, including
11 mutual water companies formed pursuant to Part 7 (commencing
12 with Section 14300) of Division 3 of Title 1 of the Corporations
13 Code, and private utilities, as defined in Section 1502 of the Public
14 Utilities Code.

15 (e) The commission shall conduct a service review before, or
16 in conjunction with, but no later than the time it is considering an
17 action to establish a sphere of influence in accordance with Section
18 56425 or 56426.5 or to update a sphere of influence pursuant to
19 Section 56425.

20 SEC. 9. Article 12 (commencing with Section 116755) of
21 Chapter 4 of Part 12 of Division 104 is added to the Health and
22 Safety Code, to read:

23
24 Article 12. Board Member Training
25

26 116755. (a) Each board member of a mutual water company
27 that operates a public water system, as defined in Section 116275,
28 shall, within six months of taking office, or by December 31, 2012,
29 if that member was serving on the board on December 31, 2011,
30 complete a two-hour course offered by a qualified trainer regarding
31 the duties of board members of mutual water companies, including,
32 but not limited to, the duty of a corporate director to avoid
33 contractual conflicts of interest and fiduciary duties, the duties of
34 public water systems to provide clean drinking water that complies
35 with the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et
36 seq.) and this chapter, and long-term management of a public water
37 system. For the purposes of this subdivision, a trainer may be
38 qualified in any of the following ways:

39 (1) Membership in the California State Bar.

1 (2) Accreditation by the International Association of Continuing
2 Education and Training (IACET) ANSI/IACET 1-2007.

3 (3) Sponsorship by either the Rural Community Assistance
4 Corporation or the California Rural Water Association.

5 (b) A mutual water company formed pursuant to Part 7
6 (commencing with Section 14300) of Division 3 of Title 1 of the
7 Corporations Code shall be liable for the payment of any fines,
8 penalties, costs, expenses, and other amounts that may be imposed
9 upon the mutual water company pursuant to this chapter. The
10 mutual water company may levy an assessment, pursuant to Section
11 14303 of the Corporations Code, to pay these fines, penalties,
12 costs, expenses, and other amounts so imposed. If the amount of
13 outstanding fines, penalties, costs, expenses and other amounts
14 imposed pursuant to this chapter exceed 5 percent of the annual
15 budget of the mutual water company, then the mutual water
16 company shall levy an assessment, pursuant to Section 14303 of
17 the Corporations Code, to pay those fines, penalties, costs,
18 expenses, and other amounts so imposed.

19 SEC. 10. Section 116760.90 of the Health and Safety Code is
20 amended to read:

21 116760.90. (a) The department shall not approve an application
22 for funding unless the department determines that the proposed
23 study or project is necessary to enable the applicant to meet safe
24 drinking water standards, and is consistent with an adopted
25 countywide plan, if any. The department may refuse to fund a
26 study or project if it determines that the purposes of this chapter
27 may more economically and efficiently be met by means other
28 than the proposed study or project. The department shall not
29 approve an application for funding a project with a primary purpose
30 to supply or attract future growth. The department may limit
31 funding to costs necessary to enable suppliers to meet primary
32 drinking water standards, as defined in Chapter 4 (commencing
33 with Section 116270).

34 (b) With respect to applications for funding of project design
35 and construction, the department shall also determine all of the
36 following:

37 (1) Upon completion of the project, the applicant will be able
38 to supply water that meets safe drinking water standards.

39 (2) The project is cost-effective.

1 (3) If the entire project is not to be funded under this chapter,
2 the department shall specify which costs are eligible for funding.
3 (c) In considering an application for funding a project that meets
4 all other requirements of this chapter and regulations, the
5 department shall not be prejudiced by the applicant initiating the
6 project prior to the department approving the application for
7 funding. ~~Project~~ *Preliminary project* costs that are otherwise
8 eligible for funding pursuant to the provisions of this chapter shall
9 not be ineligible because the costs were incurred by the applicant
10 prior to the department approving the application for funding.
11 Construction costs that are otherwise eligible for funding pursuant
12 to the provisions of this chapter shall not be ineligible because the
13 costs were incurred after the approval of the application by the
14 department but prior to the department entering into a contract
15 with the applicant pursuant to Section 116761.50.